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SUBJECT: ISRAELI MILITARY ADVOCATE GENERAL BRIEFS ON  
GOLDSTONE REPORT-RELATED INVESTIGATIONS

Classified By: Ambassador Susan E. Rice for reasons 1.4 (b) and (d).

¶1. (C) Summary: Ambassador Rice met on December 7 with Israeli Military Advocate General Major General Mandelblit to discuss the Israeli government's investigation of allegations of international humanitarian law and human rights violations, as set forth in the Goldstone report and other sources. Mandelblit underscored his independence from the military and that he reports only to the civilian Attorney General. To date, Mandelblit said that his office has investigated 140 cases of alleged misconduct stemming from the Gaza conflict, including all 34 cases in the Goldstone report. Of the Goldstone cases, eleven are currently under criminal investigation; thirteen investigations have been closed with no findings of violations of the Laws of Armed Conflict; seven are under regular field investigation; and three are under expert field investigation. Before traveling to Washington, Mandelblit plans to brief at the UN the Secretary-General's office, the Office of the Legal Adviser, and the Department of Political Affairs. He also plans to brief other P-5 members; Security Council members Austria and Mexico; and the Australian, Canadian, Dutch, and German missions. End summary.

¶2. (C) Ambassador Rice and Ambassador Wolff met on December 7 with Major General Avihai Mandelblit, the Israeli Military Advocate General, to discuss the Israeli government's response to the allegations in the Goldstone Report and other complaints about IDF actions in contravention of international humanitarian law in Gaza. Mandelblit was accompanied by Israeli Perm Rep Shalev, Israeli Deputy Perm Rep Carmon, and Major Gil Limon (head of Security and the Legal Affairs Section of the International Law Department of the Military Advocate General's Corps). Mandelblit explained that he is first and foremost a "jurist," not a soldier, and is completely independent of the IDF. Though he was appointed by the Minister of Defense five years ago, he reports only to the civilian Attorney-General. He said that Israel's Military Justice Law empowers the Military Advocate General to try soldiers not only for unique "military" offenses but also for ordinary criminal offenses under Israel's Penal Law. He noted that, like many other nations, the IDF military justice system has three components: (1) the Military Policy Criminal Investigation Division; (2) the Military Advocate General's Corp; and the military courts. (Note: He said his U.S. equivalent would be a combined Judge Advocate General for all branches of the U.S. military. End note.) He said that the military courts are composed of both judges and regular officers. Professional judges are appointed by the Israeli President and elected by a commission headed by the Minister of Defense which also includes the Minister of Justice, the President of the Supreme Court, another member of the Supreme Court, and a representative of the Israeli Lawyers Bar.

Field v. criminal investigations

¶3. (C) Mandelblit explained that when an act is believed to

be criminal, his office will immediately open a criminal investigation. He described the case of a soldier who took a credit card from a home in Gaza and used it to obtain USD 250-300 upon return to Israel. Upon completion of the criminal investigation, the soldier was sentenced to 7.5 months in military prison and will have a civilian criminal record for 17 years. When civilian casualties result from a military action and it is not clear whether the action involves violations of the Laws of Armed Conflict, the commander involved conducts a full field investigation as part of the IDF learning process. The results of the field investigation are then brought to Mandelblit. Mandelblit reviews the results and decides whether to close the investigation for lack of evidence of a violation of the Laws of Armed Conflict or whether to open a criminal investigation. If a criminal investigation is then opened, the investigation starts all over again. Mandelblit emphasized that there is a "Chinese wall" between field investigations where every soldier and commander must cooperate to the fullest extent possible and a criminal investigation where a soldier does have the right not to self-incriminate.

140 cases investigated

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¶4. (C) Mandelblit underscored that his office investigates all complaints that they come across, whether in the Goldstone report, NGO reports (including Amnesty International, Human Rights Watch, and B'Tselem), the Arab League report, or the press. He noted that 72 Palestinian Gazans have given complaints to his office, with the help of

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Palestinian NGOs, at the Erez crossing. To date, he said, they have investigated 140 cases of alleged misconduct (including all those mentioned in the Goldstone report). Of those 140 cases, 110 involved field investigations and 30 were criminal investigations since they involved criminal behavior (pillage, maltreatment of detainees) or activities that cannot be justified by military necessity (use of human shields). 45 investigations have been concluded and determined not to have involved any violations of the Laws of Armed Conflict. 85 remain open. One investigation has led to an indictment and conviction (see para three).

Goldstone report

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¶5. (C) Overall, Mandelblit emphasized that the Goldstone report's main criticism against Israel is that the Israeli leadership, not the IDF, made a policy decision to target the civilian population of Gaza and to intentionally destroy civilian property. Mandelblit explained that, of those 34 cases cited by the Goldstone report, only 12 cases were completely new to him, ten of which involved allegations of deliberate attacks on property. He stressed that all 34 incidents have been examined. Eleven are under criminal investigation (of which nine had been begun before the report's publication). Thirteen investigations have been closed with no findings of violations of the Laws of Armed Conflict. Seven are under regular field investigation, and three are under expert field investigation. Mandelblit said he plans to publish the results of all of the investigations once they have been completed. He noted that the 11 cases that remain under criminal investigation could take quite a bit more time. Mandelblit specifically noted that he does not always take the word of a commander on a field investigation, especially if he comes across contradictory evidence, and will press for further investigation, if necessary. He cited the example of the al-Maqadma mosque, where the Goldstone report alleges 15 civilians died in a missile strike and which IDF commanders initially said was never targeted. He expects a new field investigation report to now say that it was targeted by a UAV.

¶6. (C) Mandelblit took specific issue with the Goldstone report's conclusion that since Israel has precise weapons, then it must have knowingly targeted certain civilian economic property. He reviewed a number of photographs to illustrate the contrary. He showed before and after aerial photographs of the el-Bader flour mill and said that there were two cannon shots to the top of the factory but the mill remained standing. Damage to the flour mill was in response to hostile fire from the second floor of the building, not an attempt to destroy the flour mill itself. If the IDF wanted to destroy the mill, it would not have remained standing. He contrasted those photographs with before and after shots of a cement packing facility which had been completely obliterated, he said, because a tunnel ran under the facility. In terms of the Namar wells, he said that it was targeted because a wall ran around the whole structure and was a military base under control of Hamas. In terms of the sewage lagoon breach at the Gaza wastewater treatment plant, he said they had found no evidence of an aerial or ground attack at that site and that the breach was likely caused by explosives set by Hamas, not the IDF.

Other New York briefings planned

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¶7. (C) During his visit to the United Nations, Mandelblit said he would brief the Secretary-General's Office, the Office of the Legal Adviser, and the Department of Political Affairs. He will also brief the Russian, French, UK, Austrian, Australian, Canadian, Dutch, German, and Mexican missions. Ambassadors Rice and Wolff urged him also to brief the Chinese mission, the only P-5 mission they were not going to brief. (Note: Ambassador Carmon explained that the Israeli mission feels that they do not succeed in "getting through" to the Chinese mission with their briefings and have, thus, tended to not bother with them. Ambassador Rice replied that the worst case is only that they hear the briefing but do not absorb it. End note) In Washington, Mandelblit plans to brief the Departments of State and Defense.

¶8. (C) USUN will e-mail to IO/UNP and IO/HR two powerpoint presentations from which Mandelblit drew.

RICE